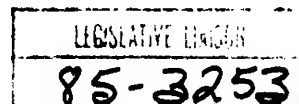


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Washington, D.C. 20505



23 OCT 1985

Mr. Robert A. Moran
Supervisory Special Agent
Office of Congressional Affairs
Federal Bureau of Investigation
Washington, D.C. 20535

Dear Mr. Moran:

Enclosed is your portion of the Legislative Program for the Second Session of the 99th Congress. Please review this submission to determine whether it is consistent with your legislative proposal contained in the 9 October letter from Director Webster to Director Casey, and our subsequent discussions.

I have also enclosed for your review a copy of the testimony by the Deputy Director of Central Intelligence (DDCI) before the Senate Select Committee on Intelligence on 21 June 1983 regarding Freedom of Information Act (FOIA) relief. In that testimony the DDCI agrees with Senator Leahy that the Congress should not expect further efforts to exempt more of the Intelligence Community from FOIA. Obviously, this testimony puts us in a difficult position if we are perceived as taking the lead on FOIA relief for the FBI. Nevertheless, we will raise with our senior management your strong desire that FOIA relief be included in the upcoming legislative program.

It is necessary that we have your comments no later than the close of business on 25 October. Thank you for your cooperation.

Sincerely,



Office of Legislative Liaison

STAT

Enclosure

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LEG/OLL: [] jb (23 Oct 1985) STAT

99/2 - 13: The Director of Central Intelligence may include in the proposed fiscal Year 1987 Intelligence Authorization Bill legislation to amend the U.S. Code to exempt the Agency from the requirement that the Archivist publish in the Federal Register the records disposal requests of the Agency for the purpose of soliciting public comment.

99/2 - 14: An amendment to the FOIA may be proposed which would exempt the FBI's organized crime files, counterterrorism files and counterintelligence files from the provisions of the FOIA that require search, review, and publication, provided those files are not older than 5 years.

99/ - 15: Legislation may be proposed that would define domestic and international terrorism and give the Attorney General or his designee exclusive jurisdiction to conduct terrorist investigations for law enforcement purposes.

99/2 - 16: Legislation may be proposed that would provide for summary deportation through the execution of a special warrant issued by the Attorney General or a special panel of judges for aliens involved in terrorist activities.

99/2 - 17: The Director of Central Intelligence may include in the proposed FY 86 Intelligence Authorization bill an amendment to the Right to Financial Privacy Act of 1978 that would require financial institutions to comply with requests by the FBI for financial records when such request has been approved by the Attorney General or his designee for foreign counterintelligence purposes.

99/2 - 18: The Director of Central Intelligence may include in the proposed FY 86 Intelligence Authorization bill legislation that would authorize the FBI upon approval by the Attorney General or his designee to receive tax return and taxpayer information regarding individuals that are subject to foreign counterintelligence investigations.

99/2 - 19: The Director of Central Intelligence may include in

the proposed FY 86 Intelligence Authorization bill legislation that would require telephone companies to comply with requests by the FBI for toll records when such requests has been approved by the Attorney General or his designee for foreign counterintelligence purposes.

99/2 - 20: The Director of Central Intelligence may include in the proposed FY 86 Intelligence Authorization bill legislation that would authorize the expenditure of funds to bring foreign officials who have counter-intelligence responsibilities in their own countries to the U.S. for consultation with FBI.

**Testimony
enclosure**

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Senator LEAHY. So the President having acknowledged a covert operation in Nicaragua makes those files a lot different than they were say 2 months ago?

Mr. McMAHON. If the President acknowledged a covert operation in Nicaragua, we would still be obliged to protect any alleged sources or methods we have there.

Senator LEAHY. I understand. I just wanted to use a concrete example to make it easier. [Laughter.]

You have got to understand us small town lawyers. We come down here to Washington, Mr. McMahon, and we have to just go simple fact by simple fact.

Mr. McMAHON. Coming from New England I appreciate that.

Senator LEAHY. That's how we keep up with you big city fellows.

Let me ask a couple of specific questions. By the way I think that this type of open session is very good, and I think that you well understand and encourage us to lay down a solid legislative history. Your answers to Senator Huddleston's questions just now are going to be an integral part of the legislative history if this act is to be passed.

To follow up on one of Senator Chafee's lines of questions, again an important area to go into, the Agency has a present position on FOIA. I understand your own feelings as an intelligence professional would be what any of us would have in a similar position. Given your preferences as a professional intelligence officer, there would be no FOIA requirement of the Agency whatsoever. I do not think anybody disputes that.

But, within the context of the way our Government functions, the Agency being part of the Government, and in the context of FOIA applying to the rest of the Government, what is the Agency's position on the public's right to access to information influencing this Nation's foreign and national security policy?

Mr. McMAHON. That is a tough call, Senator. I think that we are obliged to support the wisdom that Congress and the Constitution determined years ago when it gave the President the responsibility for conduct of foreign affairs. And in order to carry that out it was determined that certain forms of classification or secrecy had to exist.

I think that we would support the secrecy which protects the ability of the President to prosecute foreign policy in a manner that is effective and efficient.

Senator LEAHY. Well, let me go to a followup question on that. Is this bill what you want, or is it a camel's nose under the tent kind of bill? Is it a prelude to renewed pressure for broader exemption?

Mr. McMAHON. I think it is a bill that is a compromise of the Agency's recognizing that it cannot have total exemption and must seek something that protects our sources, yet at the same time lives within the spirit and the intent of Freedom of Information. I think we have struck an arrangement which just borders on acceptability in CIA.

Senator LEAHY. I see. Well, your answer to that is still important in gathering whatever kind of support there might be. It is like the FOIA work that Senator Hatch and I have done in the rest of the FOIA legislation.

Depending upon what particular problem each one of us may have been looking at, everybody has had to give somewhat to reach a workable compromise. A lot of the areas where we reached agreement has

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been on the basis of an understanding of where the bill is going, and that if we agree on a particular area, for example, we would do our best to fight off further amendments.

I would think that in trying to get support for this Goldwater-Thurmond bill, a telling factor in the minds of a lot of Senators, and certainly in mine, will be whether this is the final product or prelude for a quick followup.

Now I am not suggesting CIA or anybody else is precluded from coming back on a piece of legislation if it is not working out, to seek the normal kinds of adjustments, as we are doing in FOIA. But I want to know if this is a prelude to asking next year for a wider exemption?

Mr. McMAHON. There is no hidden agenda here, Senator Leahy. What you see is what you get, and this is what we are standing by.

Senator LEAHY. Do you understand my question and the reason for it?

Mr. McMAHON. Yes, I do.

Senator LEAHY. Is that the White House position on this bill?

Mr. McMAHON. I am led to believe that, yes.

Senator LEAHY. So we should not expect further efforts from them to exempt more of the intelligence community from FOIA?

Mr. McMAHON. Not from them. I imagine there may be an effort or two, but it would not be sanctioned.

Senator LEAHY. Well, if it is not sanctioned, it isn't going anywhere, let me tell you. [Laughter.]

Whoever did that would have two strikes against them. That would be interesting. At that point the White House and I would be joining hands.

I have a number of questions for the record, Mr. Chairman, but there is one more I would like to ask Mr. McMahon.

On page 8 of your prepared testimony you state that:

Should there be an investigation by the Inspector General's office, the Office of General Counsel, or my own office of any alleged impropriety or illegality and it is found these allegations are not frivolous, records of such investigation would be found in nondesignated files.

I applaud that conclusion. I want to know who makes the determination that an allegation of abuse or impropriety is either serious or frivolous—the sort of threshold determination.

Mr. McMAHON. Well, I think that the process of the investigation which the Inspector General or the General Counsel would undertake would determine that and that is usually done in concert with the Director or myself.

Senator LEAHY. Does that mean that documents relating to any allegation deemed frivolous would be placed in designated files and therefore would not be searchable?

Mr. McMAHON. I do not think so.

Senator LEAHY. Did you want to comment?

Mr. MAYERFELD. Well, that was not the intent. I do not think that is what Mr. McMahon had in mind there, but there are an awful lot of frivolous allegations that arrive in our mailbox. There is a large volume of crank letters that we do get that I think would have to be treated as frivolous.

Senator LEAHY. I have a great deal of sympathy for that.